

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CON-WAY TRUCKLOAD, INC.**

**APPELLANT,**

**v.  
JAMES WOOD AND DIVISION OF  
EMPLOYMENT SECURITY**

**RESPONDENTS.**

---

DOCKET NUMBER WD79858

DATE: February 28, 2017

---

Appeal From:

Labor and Industrial Relations Commission

---

Appellate Judges:

Division Two: Cynthia L. Martin, Presiding Judge, Lisa White Hardwick, Judge and Alok Ahuja, Judge

---

Attorneys:

Ronald G. Sparlin, Joplin, MO, for appellant.

Mandolin Jackson, Jefferson City, MO, for respondent.

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CON-WAY TRUCKLOAD, INC.,**

**APPELLANT,**

**v.**

**JAMES WOOD AND DIVISION OF  
EMPLOYMENT SECURITY,**

**RESPONDENT.**

No. WD79858

Labor and Industrial Relations Commission

Before Division Two: Cynthia L. Martin, Presiding Judge, Lisa White Hardwick, Judge and Alok Ahuja, Judge

Con-Way Truckload, Inc. appeals from the Labor and Industrial Relations Commission's decision awarding unemployment benefits to James Wood. Con-Way argues that the facts found by the Commission do not support the award and that there was no sufficient competent evidence in the record to support the award because Wood was terminated for misconduct connected with work because he violated written employee conduct policies.

**AFFIRM IN PART AND REVERSE AND REMAND IN PART.**

**Division Two holds:** The employer bears the burden of proving that the applicant is ineligible to receive unemployment benefits because he was discharged for misconduct connected with his work. Misconduct is statutorily defined, and includes five categories of conduct, three of which are implicated by this case.

Section 288.030.1(23)(a) provides that misconduct includes conduct or a failure to act that demonstrates a knowing disregard of the employer's interest or demonstrates a knowing violation of the standards which the employer expects of his employee. Section 288.030.1(23)(b) provides that misconduct includes conduct or a failure to act that demonstrates carelessness or negligence in such a degree or recurrence as to manifest culpability, wrongful intent, or a knowing disregard of the employer's interest or of the employee's duties and obligations to the employer. Section 288.030.1(23)(e) provides that misconduct includes a claimant's violation of an employer's rule unless the claimant can demonstrate a statutory excuse.

The Commission found, and sufficient competent evidence in the record supports, that Con-Way did not sustain its burden to establish misconduct pursuant to either section 288.030.1(23)(a) or (b). Con-Way presented no evidence to suggest that the accident where Wood overturned a tractor and trailer was the result of anything other than Wood's simple negligence, and no evidence about Wood's behavior giving rise to several earlier write-ups for safety issues. As for two write-ups where Wood's behavior was established by the record, the

write-ups were too distant in time to support the conclusion that Wood's safety history constituted misconduct.

The Commission made no findings or conclusions regarding misconduct pursuant to section 288.030.1(23)(e), though it found that Con-way had written employee conduct policies that were known to Wood and that were violated by the accident immediately preceding his arrest. Because the Commission did not address whether Wood was discharged for misconduct as defined in section 288.030.1(23)(e), we are unable to review that issue and must remand to the Commission for further proceedings.

Opinion by Cynthia L. Martin, Judge

February 28, 2017

\*\*\*\*\*

This summary is UNOFFICIAL and should not be quoted or cited.
---